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JUN 7 1963
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 28

FRANCESCO FOTI a/k/a FRANK FOTI, *Petitioner,*

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT.

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DAVID CARLINER,
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Attorneys for Association of Immigration and Nationality Lawyers.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 544

FRANCESCO FOTI a/k/a FRANK FOTI, *Petitioner,*

v.

IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT.

Pursuant to Rule 42 and Rule 44 of the Rules of this Court, the petitioner moves for leave to file a brief as an amicus curiae and for leave, after the filing of such brief, to argue orally its position on the merits of the case.

As grounds for these motions petitioner represents that it is a national organization of attorneys who specialize in the practice of immigration and nationality law and has among its concerns the procedures for obtaining judicial review of decisions of the Immigration and Naturalization Service.

The issue presented by the present case is whether under Section 106 of the Immigration and Nationality Act, 75 Stat. 651, 8 U.S.C. (Supp. III) 1105(a), Circuit Courts of Appeals have jurisdiction to review any order entered by the Immigration and Naturalization Service other than a "final order of deportation".

The petitioner urges here, and urged below, that the Court of Appeals has jurisdiction to review a denial of an application to suspend deportation. The Immigration and Naturalization Service urged below, and, petitioner is informed, will urge here, the identical position. The United States Court of Appeals for the Second Circuit in the decision below and the Ninth Circuit in *Peter Holz* v. *Immigration and Naturalization Service*, 309 F. 2d 452, *Mai Kai Fong* v. *Immigration and Naturalization Service*, 305 F. 2d 239, and *Giova* v. *Rosenberg*, 308 F. 2d 347, petition for certiorari pending, Miscellaneous No. 898, agree that there is no jurisdiction in the Court of Appeals to review any but final orders of deportation. In view of the fact that both parties before this Court are in disagreement with the decision below, the question of law before this Court cannot be adequately presented by these parties either in their briefs or in their oral argument.

The Solicitor General of the United States has consented to the grant of leave to the Association of Immigration and Nationality Lawyers to appear as amicus curiae. The petitioner, by counsel, has declined to consent to authorization for an intervenor in this matter, but has stated that he shall not oppose any application to this Court for leave of this petitioner to file a brief as amicus curiae and to participate in the oral argument.

WHEREFORE, It is requested that the Association of Immigration and Nationality Lawyers be granted leave to

file a brief as amicus curiae and to conduct oral agrument in the matter.

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